

RESOLUTION NO. 06-40

RESOLUTION OF THE CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK APPROVING INFRASTRUCTURE STATE REVOLVING FUND PROGRAM FINANCING NOT TO EXCEED \$7,200,000 FOR THE County of Kern

WHEREAS, staff of the California Infrastructure and Economic Development Bank ("Staff" and "I-Bank," respectively) has determined that the County of Kern ("Borrower") submitted a timely and complete application ("Application") requesting Infrastructure State Revolving Fund ("ISRF") Program financing for the Kern County Supervisorial District 5 Curb, Gutter, and Drainage Improvements Project. (the "Project"); and

WHEREAS, Staff has determined that the Borrower-proposed financing and Project meet all eligibility requirements contained in Government Code Section 63000 *et seq.* ("Act") and the Criteria, Priorities and Guidelines ("Criteria") for the ISRF Program.

WHEREAS, in addition to certain preliminary expenditures, the Borrower may pay certain expenditures (the "Reimbursable Expenditures") in connection with the Project prior to the issuance by the I-Bank of indebtedness for the purpose of financing costs associated with the Project on a long-term basis;

WHEREAS, the I-Bank reasonably expects that a portion of tax-exempt bonds in an aggregate amount not expected to exceed \$7,200,000 will be issued to finance the costs of the Project and that certain of the proceeds of the tax-exempt bonds will be used to reimburse the Reimbursable Expenditures; and

WHEREAS, Section 1.150-2 of the Treasury Regulations requires the I-Bank to declare its reasonable official intent to reimburse Reimbursable Expenditures for the Project with proceeds of a subsequent borrowing;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the California Infrastructure and Economic Development Bank ("Board"), as follows:

Section 1. Based upon information presented at the meeting where adoption of this resolution was presented and the staff report presented to the Board, the Board makes the following findings:

(a) Borrower meets the definition of "sponsor" pursuant to Government Code Section 63010 (u) and is thus an eligible recipient of financing;

(b) The Project meets the definition of "public development facility" pursuant to Government Code Section 63010(q) and is thus an eligible project to be financed;

(c) The categories of Project costs proposed to be paid with ISRF Program funds meet the definition of "Costs" pursuant to Government Code Section 63010(f) and thus are eligible for ISRF Program financing;

(d) Borrower adopted a resolution consistent with the requirements of Government Code Section 63041;

(e) Borrower meets the "need for I-Bank financing" and "readiness to proceed" criteria contained in the Criteria;

(f) Borrower and Project are eligible for tax-exempt financing under Federal law, without an allocation of private activity bond volume cap as required in the Criteria;

(g) The Project will not result in a "business relocation" as defined in the Criteria;

(h) The proposed financing complies with the underwriting criteria and sources of loan repayment specified in the Criteria; and

(i) The proposed Project is financially feasible, with all Project funding sources identified and committed.

Section 2. The provision of ISRF Program funds to the Borrower, is consistent with the terms and conditions specified in Attachment A to this resolution, is hereby approved. The Chair or the Executive Director and the Secretary are authorized to execute all documents, certificates and other written agreements reasonably necessary to effectuate the described financing. The authority to execute financing documents shall expire automatically two hundred and ten (210) days from the adoption of this resolution.

Section 3. This resolution does not constitute a commitment to finance the Project, but instead sets forth the terms and conditions that shall be contained in the financing agreement with the Applicant. It is the understanding that the financing agreement will require considerable conditions and agreements on the part of the Applicant in order to adequately protect the interests of the I-Bank. Attachment A is meant solely to call out terms and conditions specific to this financing, and is not meant as a listing of conditions of sufficient specificity to constitute a commitment to finance.

Section 4. This resolution is adopted for purposes of establishing compliance with the requirements of Section 1.150-2 of the Treasury Regulations. This resolution does not bind the I-Bank to make any expenditure, incur any indebtedness, or proceed with the financing of the Project.

Section 5. All of the Reimbursable Expenditures covered by this resolution were made not earlier than 60 days prior to the date of this resolution.

Section 6. The Board hereby declares its reasonable official intent to use proceeds of tax-exempt bonds to reimburse the Borrower for the Reimbursable Expenditures.

Section 7. This resolution shall take effect from and after its adoption.

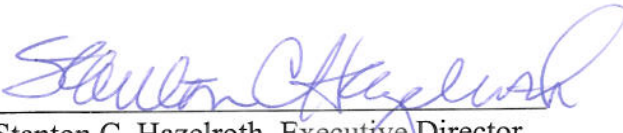
PASSED, APPROVED, AND ADOPTED at a meeting of the Board of Directors of the California Infrastructure and Economic Development Bank on October 24, 2006, by the following vote:

AYES: FISH, LUJANO, SHEEHAN, BUSH, RICE


NOES: NONE

ABSENT: NONE

ABSTAIN: NONE

By: 
Stanton C. Hazelroth, Executive Director

ATTEST

By: 
Roma Cristia-Plant, Secretary

ATTACHMENT A

1. **Borrower:** County of Kern.
2. **Project:** Kern County Supervisorial District 5 Curb, Gutter, and Drainage Improvements Project.
3. **Amount of Financing:** Not to exceed \$7,200,000.
4. **Funding Availability:** The I-Bank's financing commitment is subject to the availability of funds from either, or a combination of, proceeds of a revenue bond issue or I-Bank equity funds. The County shall execute the I-Bank financing agreement within 210 days of October 24, 2006, or the commitment of funds may be cancelled by the I-Bank.
5. **Maturity:** Not to exceed 20 years.
6. **Repayment/Security:** Lease payments from the General Fund of the County.
7. **Interest Rate:** 67% of Thompson's Municipal Market Data Index for an "A" rated tax-exempt security with a weighted average life similar to the I-Bank financing based on the rates on October 2, 2006.
8. **Fees:** Financing origination fee of 0.85% of the I-Bank, and an annual fee of 0.3% of the outstanding principal balance.
9. **Type of Financing Agreement:** General Fund Lease Agreement between the County and the I-Bank for the County Fire Department Repair and Maintenance Shop and the County Fire Department Administration Building (Leased Assets).
10. **Financing Agreement Covenants:** The following are some of the covenants that will be contained in the Lease Agreement.
 - a. The County shall covenant to budget and appropriate the lease payment, and to use its best efforts to maintain sufficient General Fund revenues to provide moneys to fund all necessary and appropriate General Fund operations.
 - b. The County may request to prepay all or a portion of the financed amount. A request for a reduction is considered a prepayment. The I-Bank shall respond promptly to any prepayment request and shall make every effort to accommodate the request, subject to the prepayment restrictions of the bonds to which this financing is pledged. Notwithstanding the above, the County shall be authorized to prepay all or a portion of the outstanding principal balance according to the following: 102% of the outstanding principal balance if the prepayment date is on or after ten years, but less than eleven years, from the effective date of the Lease Agreement; 101% of the outstanding principal balance if the prepayment date is on or after eleven years, but less than twelve years, from the effective date of the Lease Agreement; or without premium if the prepayment date is twelve years or more from the effective date of the Lease Agreement. The County may on any date provide for a legal defeasance of the principal amount outstanding and any additional payments then due.
 - c. An agreement by the County to indemnify the I-Bank and its directors, officers and employees from any liability arising from the Lease Agreement or from construction or operation of the Project.

11. Conditions Precedent to Agreement Execution:

- a. Adopted County resolution authorizing the execution and delivery of the Lease Agreement and Site Lease, and approving certain other matters in connection therewith.
- b. Receipt of an opinion of legal counsel to the County that the County has the legal authority to enter into the I-Bank Lease Agreement, that there is no litigation currently pending or anticipated that will have a material adverse effect on the County's ability to make lease payments, and that the Lease Agreement and Site Lease are legal, binding and enforceable agreements of the County.
- c. Title of the Leased Assets with all exceptions acceptable to I-Bank.

12. Conditions Precedent to Initial Disbursement: The following are some of the conditions, which will be required precedent to the initial disbursement of I-Bank funds:

- a. Execution by the County of a Lease Agreement and Site Lease and Tax Certificate consistent with the terms contained herein.
- b. Evidence of adequate insurance against liability and damage or destruction of the Leased Asset in such amounts and against such risks as are usually covered for similar properties, and use and occupancy insurance and rental interruption insurance for the Leased Assets with the I-Bank named as the additional insured and/or loss payee, as appropriate.
- c. Evidence of CLTA title insurance.

13. Conditions Precedent to Initial Construction Disbursement: The following are some of the conditions, which will be required precedent to the initial construction disbursement of I-Bank funds:

- a. Certifications by the County that all required permits have been obtained for the construction of the Project.
- b. A written statement by the County Administrative Officer, County counsel or other designated person that:
 - i All construction contracts and subcontracts necessary for the construction of the applicable Project component have been awarded, and were awarded pursuant to competitive bidding and County procedures normally required for similar construction projects.
 - ii Project costs for the applicable Project component are consistent with the Sources and Uses listed in this staff report.
 - iii All prime contracts require the contractor to maintain appropriate builder's risk insurance and name the County as additional insured and loss payee, require the contractor to maintain liability insurance and name the County as an additional insured, and include performance and payment bond provisions and name the County as additional payee.
 - iv All construction contracts are let to the lowest responsible bidder at a fixed price subject to increase only for allowable extra work, change orders approved by the County and damages or delays authorized by the laws of the State.
 - v All contracts and subcontracts require payment of prevailing wage rates and compliance with Chapter 1 (commencing with Section 1720) of Part 7 of Division 2 of the California Labor Code.
 - vi All construction contracts require payment of workers' compensation insurance by contractors and subcontractors.
 - vii All construction contracts include nondiscrimination provisions.

viii The County has utilized the contractor pre-qualification forms developed by the Department of Industrial Relations as set forth in AB 574 (Chapter 972 of the Statutes of 1999) codified in Public Contract Code Section 20101 et seq.

14. Conditions Precedent to Final Disbursement: The following are some of the conditions precedent to final disbursement of I-Bank funds:

- a. Recorded Project Notice of Completion.
- b. Lien waivers for the Project, or passage of the applicable statutory time periods for filing preliminary lien notices and any subsequent stop notices.
- c. Certification that the Project has been completed in accordance with the approved plans and specifications, and that the completed Project is consistent with the definition of Project in this staff report and is acceptable to the I-Bank.
- d. Project operating permits.

15. Financial and Other Reporting Requirements:

- a. Audited annual County financial statements, due to the I-Bank within 210 days of fiscal year end, or such other time that is acceptable to the I-Bank.
- b. Other information as the I-Bank may request from time-to-time.